

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the matter of	)	
	)	
Rules and Regulations Implementing the	)	
Telephone Consumer Protection Act of 1991	)	CG Docket Number 02-278
	)	
Petition for Expedited Declaratory Ruling of	)	
NorthStar Alarm Services, LLC	)	

REPLY COMMENTS

John A. Shaw  
374 Cromwell Drive  
Rochester, NY 14610  
[john@jashaw.com](mailto:john@jashaw.com)

March 28, 2019

## INTRODUCTION AND SUMMARY

These comments are in reply to the NorthStar Alarm Services, LLC (NorthStar) comments<sup>1</sup>, the Soundboard Association (SBA) comments<sup>2</sup>, and the NorthStar petition<sup>3</sup>. Those comments were in response to the Petition for Expedited Declaratory Ruling filed by NorthStar Alarm Services, LLC which I oppose, and the resulting Public Notice seeking public comment on the petition.<sup>4</sup>

At issue is whether the Telephone Consumer Protection Act of 1991 (“TCPA”)<sup>5</sup> applies to “calls using recorded audio clips specifically selected and presented by a human operator in real-time, a tool generally referred to as ‘soundboard technology’”.<sup>6</sup> In particular, an issue is whether the TCPA reference to the term “A message”<sup>7</sup> applies to multiple recorded sound clips strung together with each other in one call.<sup>8</sup>

I comment as a telephone consumer only. I am not employed by or otherwise connected with any business or organization that makes telephone calls to consumers or with any business or organization involved with soundboard or any other product used for telephone calls.

## REPLIES

### NorthStar comments

In their comments NorthStar commented that

The technology also allows for increased accessibility because it provides assistance to those who have difficulty communicating due to, for example, speech impediments, heavy accents, or a physical or mental disability that might otherwise prevent the individual from using the telephone as part of his or her job responsibilities.<sup>9</sup>

---

<sup>1</sup> Comments from NorthStar Alarm Services, LLC filed March 15, 2019 to CG Docket 02-278 (“*NorthStar Comments*”).

<sup>2</sup> Comments from the Soundboard Association filed March 15, 2019 to CG Docket 02-278 (“*SBA Comments*”).

<sup>3</sup> Petition for Expedited Declaratory Ruling filed by NorthStar Alarm Services, LLC (“*NorthStar*”) filed Jan. 2, 2018, (“*Petition*”) (accessible at <https://ecfsapi.fcc.gov/file/10103290733918/NorthStar%20FCC%20Petition.pdf>).

<sup>4</sup> *Consumer and Governmental Affairs Bureau seeks comment on petition for expedited declaratory ruling by NorthStar Alarm Services, LLC*, DA 19-74 (February 12, 2019).

<sup>5</sup> 47 U.S.C. § 227, P.L. 102-243, 105 STAT 2394.

<sup>6</sup> *Petition* at 1.

<sup>7</sup> See 47 U.S.C. § 227(b)(1)(B).

<sup>8</sup> See SBA Comments at 3, *see also petition* at 8.

<sup>9</sup> *NorthStar comments* at 7.

If the recipient of a phone call wishes to interrupt the sound board recorded clips, they would face the possibility of conversing with someone who had difficulty communicating. If a person is able to communicate, that person would not need the sound board technology. If a person has needed the soundboard technology to communicate, that person would be unable to converse with the call recipient.

### **Soundboard comments**

SBA, in their comments, state that “Textually and contextually, the delivery of ‘a message’ means the automated delivery of ‘one’ prerecorded message that is played from start to finish lasting the duration of the call.”<sup>10</sup>

The definition of “message” does not mean that multiple sound clips delivered in sequence cannot be considered “A message” as used in the TCPA. The word. “message” is defined by the Merriam-Webster on-line dictionary as:

- 1 : a communication in writing, in speech, or by signals
- 2 : a messenger's mission
- 3 : an underlying theme or idea<sup>11</sup>

It is clear that the plaid text of the TCPA does cover marketing calls that use the soundboard technology, even if the single message delivered by the call consist of multiple recorded clips.

### **NorthStar Petition**

NorthStar, in its petition, states that “Where a live agent engages in a dynamic, interactive exchange with the call recipient throughout the entirety of the call, as is the case with soundboard technology, the call is not delivering a prerecorded message as defined by the Act [TCPA].”<sup>12</sup> There is nothing in the TCPA that supports this interpretation.

### **CONCLUSION**

Soundboard technology uses prerecorded voice in direct violation of the clear and unambiguous text of the TCPA. If telemarketers such as NorthStar and the Soundboard Association wish to allow soundboard technology to be used in telemarketing calls, they have at least two options:

---

<sup>10</sup> *SBA Comments* at 3.

<sup>11</sup> Merriam-Webster dictionary, accessible at <https://www.merriam-webster.com/dictionary/message>

<sup>12</sup> *Petition* at 7

they can obtain prior express consent from consumer to make the calls, or they can ask Congress to amend the TCPA to allow calls made with soundboard technology. They should not attempt to change the regulations through the use of a petition for declaratory ruling.

Again, I urge the Commission to deny the petition by NorthStar and to consider calls using recorded clips or soundboard technology to be covered by the TCPA.

Prompt denial of this petition will assist the courts in addressing the central legal action and will establish a national standard for courts to consider when confronted with this issue.

Respectfully submitted,

/s/John A. Shaw